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| 10/538,251 | 06/09/2005 | Wolfgang Jobmann | D4695-00136 | 1872 |

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DUANE MORRIS LLP
IP DEPARTMENT
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| EXAMINER |
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JACYNA, J CASIMER

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| ART UNIT | PAPER NUMBER |
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3754

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06/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/538,251 | Applicant(s) JOBMANN, WOLFGANG | |
| | Examiner J. Casimer Jacyna | Art Unit 3754 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>080906</u> . | 6) <input type="checkbox"/> Other: _____ |

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: A proper oath or declaration in the English language or a translated version in English cannot be found in the Application papers. If Applicant has submitted an oath/declaration that has been lost or replaced by the Office, then it is requested that Applicant provide another copy to make the file history complete. It is noted that a German language declaration of inventorship has been filed, but this document has not been translated and does not appear to meet the requirements of an oath or declaration for a U.S. utility application.

2. The disclosure is objected to because of the following informalities: It lacks the headings note in MPEP 608.01(a).

Appropriate correction is required.

3. The drawings are objected to because the figure 1 heading is not in the English language. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. On line 1 of claim 1, it is not certain as to what is the alternative choice in the phrase “for a or”. It is not certain if the limitations following “in particular” on lines 6 and 9 of claim 1 and in claim 18 are cited as unclaimed examples or if they are to be considered part of the claimed combination. Line 1 of claim 1 calls for the entire claimed apparatus to be a “barrier device”. However, lines 8 and 11 of claim 1 call for a second a barrier device. Wherein it is not certain if the barrier devices on lines 8 and 11 are further defining the barrier device of line 1 or if the barrier devices on lines 8 and 11 are in addition to the barrier device of line 1 and are defining additional barrier devices. It is also not certain if the entire claim is only calling for a barrier device as defined on line 8 and 11 with the remaining claim elements such as the reservoir, cover, edge portion and reaching over portion not being part of the claimed combination and only being recited for describing the unclaimed environment the barrier device is used in. In claims 6 and 13, it is not certain if the terms in parenthesis are meant or are not meant to be part of the claimed combination. In regard to claim 18, there is no antecedent basis for a dishwashing machine in parent

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claim 1 because claim 1 is limited to a container with a supply of filled in drinks and dishwashing machines are not generally known to include a supply of potable beverage.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 6-12 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 295 12 609. DE discloses a barrier device including a cover 2 above a reservoir 1 that is capable of holding filled in canned or bottled drinks because it is well known in the art to fill garbage containers with ice and either or both canned and bottled drinks during garden parties and thereby container 1 is a filled in drinks supply and dispenser as claimed, a cover reaching over portion adjacent and surrounding 4, a barrier device 5 and a blocking device 7, 9, 13 and/or 4. In regard to claim 12, De discloses a first end with a triangular projection that abut 13 and a second end that is shaped to fit within and abut the lock cylinder 7.

8. Claims 1-3, 6-9, 13, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Netherlands 8402362. Netherlands discloses a barrier device including a cover 2 above a reservoir 1 that is capable of holding filled in canned or bottled drinks as claimed if a user desired to store drinks in the container 1, a cover reaching over portion 4, 18, a barrier device 15 and a blocking device 30.

9. Claims 1, 2, 8-10, 13-18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith 2,083,621. Smith discloses a barrier device including a cover 15

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above a reservoir 11 that is capable of holding a fluid as claimed if a user desired to pour a drink into the container 11, a cover reaching over portion 16, a barrier device 18 that is displaceable with respect to the portion 16 by bending toward and away from 16 for insertion into and removal from 25 and a blocking device 25. In regard to claims 16 and 17, Smith discloses an annular projection 13 and an assigned projection 19, 20.

10. Claims 1, 2, 4, 5, 8, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Peckels 5,507,411. Peckels discloses a barrier device including a cover 12 that in a normal rest position as shown at 10 in figure 1 is disposed above a reservoir 14 that holds a filled in drink as claimed, a cover reaching over portion that extends over the edge of the container as shown adjacent 16B in figure 5 or 48A in figure 2, a barrier device 90 that is a barrier device because it prevents or is a barrier to fluid flow through the cover and is displaceable with respect to the portion as shown in figures 5 and 6 and a magnetizable blocking device 98, 100. In regard to claim 5, parent claim 4 is written in the alternative where the blocking device may either be magnetizable or movable by a magnet. Since Peckels reads on the first alternative and claim 5 is further defining the second alternative, claim 5 does not present any limitation that can overcome the Peckels reference because this alternative is not being chosen. Smith discloses an annular projection 13 and an assigned projection 19, 20.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ozdemir teaches a filled in drink container 33 with a reaching over cover that fits over the edge of the container at 17 and includes a retractable

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barrier device 22 that fits into a recess in the cover and a magnetized blocking device 21.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Wed. thru Fri. 9AM-7PM, Mon. 7AM-1PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/
Primary Examiner, Art Unit 3754